(1992) 08 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 391-DBA of 1987

Income Tax Officer — APPELLANT

Vs

Mohinder Pal Ajay Kumar and Another — RESPONDENT

Date of Decision : 17-08-1992

Acts Referred:
Income Tax Act, 1961 — Section 276C

Citation : (1993) 111 CTR 207 : (1993) 203 ITR 866

Hon'ble Judges : S.D. Bajaj, J;Harmohinder Kaur Sandhu, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; Ashok Aggarwal Rajesh Bindal and Ramesh Kumar, for the Respondent

Judgement

S.D. Bajaj, J.—Murari Lal, partner, in charge of the business of Messrs. Mohinder Pal Ajay Kumar, a registered partnership concern of Kath Mandi, Hissar, was charged by the learned trial court on February 15, 1986, of having prepared false books of account for the assessment year 1981-82, and thereby wilfully attempted to evade Income Tax, penalty and interest chargeable under the Income Tax Act, 1961. The accused pleaded "not guilty" thereto and claimed to be tried. Vide its impugned judgment, dated November 25, 1986, the learned trial court acquitted the accused. Feeling aggrieved by the judgment of acquittal aforesaid, the Income Tax Officer, A-Ward, Hissar, has filed Criminal Appeal No. 391-DBA of 1987 in this court.

2. We have heard Shri R. P. Sawhney, Advocate, for the appellant and Shri Ashok Aggarwal, Senior Advocate, with Sarvshri Rajesh Bindal and Ramesh Kumar, Advocates, for the respondents and have perused the relevant material on record very carefully.

3. The facts leading to the prosecution are that the business premises of the accused firm were surveyed u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), on July 10, 1981. During the survey, the inventory of stock of timber wood of the accused firm was prepared. In that survey, the books

of account of the assessee were also checked and signed by the Income Tax Officer. In the books of account, the assessee had shown an opening balance of stock as on April 1, 1981, as Rs. 61,450 which was the closing balance of the stock as on March 31, 1981. The valuation of stock as per inventory prepared at the time of survey on July 10, 1981, was found to be Rs. 1,38,970.51, whereas the stock of the accused No. 1 firm as per its books of account worked out to Rs. 1,05,019.10 as on July 10, 1981, which was the closing stock as on July 9, 1981. Thus, there was an excess of stock of about Rs. 34,000 on the date of survey in respect of accused No. 1 firm. Statement of Murari Lal accused partner was recorded at the time of survey. It has been alleged that, in his account books, the accused No. 1 firm had shown a profit of Rs. 68,526.55 in the timber trading account for the accounting year 1980-81 (assessment year 1981-82), but, because of the said survey, the accused in their Income Tax return for the assessment year 1981-82 added Rs. 35,000 to the profit in the timber trading account as supplementary profit in addition to Rs. 61,450 as per its accounts as on March 31, 1981, by making the total stock of Rs. 96,450. Had there been no survey the assessee would not have disclosed the aforementioned amount of Rs. 35,000 as profit in the books of account and they mentioned this amount of profit after survey by drawing a separate profit account in the books of account by words "To profit to supplementary to profit and loss account" and in the stock account by words "Additional closing stock valuation by profit share from supplementary profit and loss account". Thus, the allegation that the accused had wilfully attempted in the aforementioned manner to evade tax, penalty and interest chargeable or imposable on him by preparing false books of account which were in their possession and control and made false entries in them regarding the stock held by them and wilfully omitted the entry of profit in those books of account with a view to enable the accused/ assessees to avoid tax, etc., and have thus committed an offence punishable u/s 276C of the Act. Hence this complaint.

4. The statement of the accused u/s 313 of the Criminal Procedure Code was recorded whereby the prosecution allegations made against them have been denied. Though it has been admitted therein that the survey was conducted on July 10, 1981, it has been added that the account books of accused No. 1 firm were complete and correct up to July 10, 1981, and no deficiency was found in the survey ; that the Income Tax Officer had told him that there was a difference between the stock valuation as per accounts of the accused firm and as per valuation made by the Income Tax Officer during the said survey of accused No. 1 firm on July 10, 1981, and so the accused should surrender the difference of Rs. 34,000 in valuation during the assessment year 1981-82 ; that at first he refused to do so on the plea that the accounts have already been closed and the valuation shown in the account books of the accused firm are also correct but when the Income Tax Officer pressed him and added that by surrendering the difference as supplementary account, the matter will be closed, the accused showed Rs. 35,000 as supplementary profit just to buy peace with the Income

Tax Department.

5. Learned counsel appearing for the appellant urged that, admittedly, the survey of the business premises of the accused No. 1 firm was conducted on July 10, 1981, and inventory, exhibit PN, of the timber stock was prepared and signed by the accused, Murari Lal, and his statement, exhibit PL, to that effect was also recorded. According to him, the facts that the difference in valuation of about Rs. 35,000 was actually there and that the accused had shown their stock less by that amount stand admitted by the accused inasmuch as the accused No. 1 firm in its Income Tax return for the assessment year 1981-82 copy, exhibit PC, has shown the said amount of difference in valuation by showing it as supplementary profit and to the same effect is the testimony of Shri V. P. Sikka, P. W.-l, Yogesh Kumar, P. W.-3 and S. P. Goel, P. W.-4. He has thus concluded that the prosecution version of wilful attempt on the part of the accused firm to evade their liability to pay tax, etc., is, therefore, established because had the survey not been conducted by the Income Tax Department on July 10, 1981, on the premises of the accused No. 1 firm, it would not have shown the correct valuation and would have saved tax on the sum of about Rs. 35,000. He has cited P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , as an authority for the view that even if no penalty is imposed by the Income Tax Officer on the said amount of Rs. 35,000 even then, the present prosecution is competent as the criminal court has to judge the case independently on the evidence placed before it.

6. The facts of the case which are not disputed are that the accused No. 1 is a registered firm which is carrying on timber business at Hissar, and accused Murari Lal is its partner ; that closing balance of the stock as on March 31, 1981, was of Rs. 61,450 ; that the survey of accused No. 1 firm was conducted on July 10, 1981, by the Income Tax Department officials, i.e., the Income Tax Officer, S. P. Goel, P. W.-4 and Inspector, Yogesh Kumar, P. W.-3, and during this survey the inventory of the stock, exhibit PN, was prepared and statement of the accused, Murari Lal, exhibit PL, to that effect was recorded ; that when the Income Tax Department pointed out the difference between valuation of the stock as assessed by them, i.e., the Income Tax Department officials and the valuation in the account books at about Rs. 33,991, the accused No. 1 firm while filing the Income Tax return copy, exhibit PC, for the assessment year 1981-82 showed profit of Rs. 68,526.55 as per account books and also showed profit of Rs. 35,000 as supplementary profit keeping in view the said difference found in the survey conducted by the Income Tax Department on July 10, 1981. It is also admitted by the Income Tax Officer, S. P. Goel, who conducted the survey with the Inspector, Yogesh Kumar, P. W.-3, that during the course of the survey, he did not find any stock without a bill and he also did not find any bill which was not entered in the books of account of accused No. 1 firm. This crystal clear deposition on the part of this witness, S. P. Goel, the Income Tax Officer, P. W.-4, clearly proves that the stock found in the business premises of accused No. 1 firm was properly accounted for in the account books of the firm and was

complete.

7. At the most, the disputed valuation of the stock of the respondent concerned can be regarded as preparation on the part of accused, Murari Lal, to file an Income Tax return showing less profit. The accused himself corrected the valuation after the survey and before filing the Income Tax return. Initial preparation, therefore, did not mature into an attempt to attract the penal provisions contained in Section 276C of the Income Tax Act, 1961.

8. Jog Raj Vs. State of Punjab, , is an authority for the view (at page 765) : "On going through the order of the learned Additional Sessions Judge, it appears that the main consideration which prevailed with the learned Additional Sessions Judge was that the petitioner offered the peak credit to the Department for the purpose of securing peace with it so that the learned Additional Sessions Judge thought that the surrender made by the petitioner amounted to an admission on his part regarding concealment of income. But I am afraid that the learned Additional Sessions Judge was not justified in treating the statement of the petitioner as a confession in the sense that he did not confess that he had actually concealed income but merely offered the peak credit to the Department only to seek peace with the Department. Apart from this so-called admission of the petitioner, the prosecution failed to bring on record any evidence showing that the petitioner had concealed his income in the return and had wrongly verified the same. The prosecution only proved on record the assessment order, the notice issued to the petitioner and the replies sent by him. No evidence was led by the prosecution to show what was the actual income of the petitioner for the year in dispute. The evidence of the Income Tax Officers that the petitioner concealed his actual income remains an opinion of the officers, while in a criminal case, a heavy onus is cast on the prosecution to prove its case against the accused beyond reasonable doubt. I am afraid that the prosecution has failed in its duty in this case".

9. In this view of the matter, there is hardly any merit in the appeal against the acquittal filed by the Income Tax Officer, Ward-A, Hissar. The same is, therefore, dismissed.